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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,864	09/30/2003	Robert J. Medoff	U 014838-7	1873
7590	05/31/2005		EXAMINER	
Ladas & Parry 26 West 61 Street New York, NY 10023			REIP, DAVID OWEN	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/675,864

Applicant(s)

MEDOFF, ROBERT J.

Examiner

David O. Reip

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 53-65 is/are allowed.
- 6) ☒ Claim(s) 1-12, 15, 16, 30, 32-48 and 50-52 is/are rejected.
- 7) ☒ Claim(s) 13, 14, 17-29, 31 and 49 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the cannulated second part (ref. claim 16), threaded crossing holes (ref. claim 18), one or more crossing fasteners adapted for being adjustably secured in the second part (ref. claim 19), an expandable slotted bearing (ref. claim 20), two adjacent washers integrated into a common plate (ref. claim 26), the second part with an external thread (ref. claim 27), a fastener with a threaded portion and a smooth tapered portion (ref. claim 30), and a fastener with a smooth, unthreaded portion beneath the head (ref. claim 31), must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

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Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7, 10-12, 15, 30, 33-45, 47, 48, and 50-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Warburton (U.S. Pat. No. 6,527,775). Warburton shows a distal radius fracture fixation system having all the limitations as recited in the above listed claims, including: a buttressing element 25 with a first part 28 and a blunt second part 27; bone screws 35; crossing screw 30; a two part embodiment having a screw 120 engaged in a threaded hole 120a (see Fig. 7); and a multi-part embodiment having morse tapers (see Fig. 9B).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 9, 16, 32, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warburton in view of Kyle (U.S. Pat. No. 4,438,762), McAtee (U.S. Pat. No. 3,763,855), and Behrens (U.S. Pat. No. 6,033,407). As previously discussed, Warburton shows a device that is basically the same as that recited in claims 8, 9, 16, 32, and 46. However, Warburton does not show: a tongue and groove connection (ref. claims 8, 9 and 46); cannulation (ref. claim 16); and a washer (ref. claim 32). Kyle teaches a fracture fixation device constructed with a tongue and groove type connection (see Fig. 3) between first and second parts of the device, such connection being a well-known and conventional means one skilled in the art uses when designing the mating of two parts, especially parts designed to have some amount of linear adjustability. Additionally, Behrens teaches a cannulated intramedullary nail, the cannulation being provided for use with a guidewire, such being a well-known and conventional means one skilled in the art uses for precise placement of devices in bones during surgery. Further, McAtee teaches a bone fastening device utilizing a washer for stress distribution, such a washer being a well-known and conventional means one skilled in the art uses for stress distribution under the head of a screw, especially when the screw is being applied against an uneven surface. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to have designed an embodiment of the Warburton device to have a tongue-and-groove connection, a

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cannulation, and to utilize washers under the heads of any of the screws, for the reasons detailed above.

***Allowable Subject Matter***

Claims 53-65 are allowed.

Claims 13, 14, 17-29, 31, and 49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David O. Reip whose telephone number is 571-272-4702. The examiner can normally be reached on 7 A.M.- 4 P.M. Mon-Thu and every other Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "David O. Reip", is positioned above the printed name.

David O. Reip  
Primary Examiner  
AU 3731